

**REMARKS**

Claims 1 and 2 were examined and reported in the Office Action. Claims 1 and 2 are rejected. Claim 2 is amended. Claims 1-2 remain.

Applicants request reconsideration of the application in view of the following remarks.

**I. 35 U.S.C. § 101**

It is asserted in the Office Action that claims 1 and 2 are rejected in the Office Action under 35 U.S.C. § 101, because the claimed invention is directed to non-statutory subject matter.

Applicant has amended claim 1 to include the following limitations “the allocation of selected channels from the plurality of unallocated channels reduces an effect of Raman crosstalk in the WDM transmission system.” The allocation method does have a practical application that produces a tangible and concrete result. That is, the allocation of channels in order of transmission speed to the longest wavelength band available reduces the effect of Raman crosstalk. Further, allocation of all the communication channels is tangible as well.

Accordingly, withdrawal of the 35 U.S.C. § 101 rejection for claims 1 and 2 is respectfully requested.

**II. 35 U.S.C. § 103(a)**

A. It is asserted in the Office Action that claim 1 is rejected in the Office Action under 35 U.S.C. § 103(a), as being unpatentable over U. S. Patent No. 6,580,536 issued to Chraplyvy et al. ("Chraplyvy"). Applicant respectfully traverses the aforementioned rejection for the following reasons.

According to MPEP §2142

[t]o establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference

or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. (In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991)).

Further, according to MPEP §2143.03, “[t]o establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. (In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).” *“All words in a claim must be considered in judging the patentability of that claim against the prior art.”* (In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970), emphasis added.)

Chraplyvy discloses high-data bit rate channels are used in the passband region and lower-data bit rate channels are used above the passband region (Chraplyvy, column 3, lines 33-45). Chraplyvy, however, does not teach, disclose or suggest that the channels are allocated in order of transmission speed to the longest wavelength band available (which is also in order) until all channels are allocated. That is, Chraplyvy does not teach, disclose or suggest Applicant's amended claim 1 limitations of

selecting a channel having the lowest transmission speed from a plurality of unallocated channels; allocating the selected channel to the longest wavelength band of a plurality of empty wavelength bands; and determining whether unallocated channels are left from the plurality of unallocated channels to repeatedly perform selecting the channel having the lowest transmission speed from the plurality of unallocated channels and allocating the selected channel to the longest wavelength band of the empty wavelength bands in order from the channel with the lowest transmission speed to a channel with a highest transmission speed, until all the channels of the plurality of unallocated channels are allocated, wherein the allocation of selected channels from the plurality of unallocated channels reduces an effect of Raman crosstalk in the WDM transmission system.

Since Chraplyvy does not teach, disclose or suggest all the limitations of Applicant's amended claim 1, as listed above, Applicant's amended claim 1 is not obvious over Chraplyvy in

view of no other prior art since a prima facie case of obviousness has not been met under MPEP §2142.

Accordingly, withdrawal of the 35 U.S.C. § 103(a) rejection for claim 1 is respectfully requested.

**B.** It is asserted in the Office Action that claim 2 is rejected in the Office Action under 35 U.S.C. § 103(a), as being unpatentable over Chraplyvy in view of U. S. Pub. No. 2003/0007723 by Roux et al. (“Roux”). Applicant respectfully traverses the aforementioned rejection for the following reasons.

Claim 2 directly depends on claim 1. Applicant has addressed Chraplyvy regarding claim 1 above in section IIA.

Roux is cited for disclosing the bands include C and L-bands. Even if Chraplyvy is combined with Roux, the resulting invention would still not teach, disclose or suggest the limitations of Applicant’s amended claim 1 as listed above in section IIA.

Since neither Chraplyvy, Roux, and therefore, nor the combination of the two teach, disclose or suggest all the limitations of Applicant's amended claim 1, as listed above, Applicant's amended claim 1 is not obvious over Chraplyvy in view of Roux since a prima facie case of obviousness has not been met under MPEP §2142. Additionally, the claim that directly depends on claim 1, namely claim 2, is also not obvious over Chraplyvy in view of Roux for the same reason.

**CONCLUSION**

In view of the foregoing, it is believed that all claims now pending, namely 1-2, patentably define the subject invention over the prior art of record and are in condition for allowance and such action is earnestly solicited at the earliest possible date.

If necessary, the Commissioner is hereby authorized in this, concurrent and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2666 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17, particularly extension of time fees.

Respectfully submitted,  
BLAKELY, SOKOLOFF, TAYLOR, & ZAFMAN

Dated: September 6, 2007


By

  
Steven Laut, Reg. No. 47,736

12400 Wilshire Boulevard  
Seventh Floor  
Los Angeles, California 90025  
(310) 207-3800

**CERTIFICATE OF TRANSMISSION**

I hereby certify that this correspondence is being submitted electronically via EFS Web on the date shown below to the United States Patent and Trademark Office.

  
Jean Svoboda

Date: September 6, 2007